

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPMS No. 2374 of 2022 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Arvind Kumar Sharma, Advocate, for the petitioner. Mr. Shivanand Bhatt, Advocate, for respondents. The petitioner in the instant Writ Petition is aggrieved against the impugned order dated 9th September, 2022, as it was passed by the Court of 1st Addl. District Judge, Roorkee, District Haridwar, by virtue of which, the Misc. Case No. 9 of 2020, Sushil Kumar and another Vs. Alladiya and others, has been decided against him, as a consequence thereto, resulting into the rejection of his application, paper No. 3-Ka, which was filed by the petitioner in support of the delay condonation application, which has been filed along with the appeal, which he has preferred against the judgment and decree rendered by the Court of Civil Judge, Junior Division, Roorkee, District Haridwar, in Suit No. 203 of 2014, Alladiya and others Vs. Sushil and another. As a consequence thereto, by virtue of the judgment dated 25th September, 2019, the Suit of the plaintiff /respondent was decreed as against the defendant / petitioner, herein. The appeal as against the said judgment of the learned Trial Court, was preferred by the petitioner on 27th February, 2020, which accompanied with it, an application for seeking condonation of delay of about 22 days, which has chanced in filing the appeal and the reason, which has been given in the Delay Condonation Application, as filed by the petitioner, was that the petitioner fell ill and due to which, he was unable to file the appeal within the time, and along with the Delay Condonation Application, he has filed the requisite medical certificates, in support of the application for seeking condonation of delay. Rather he intended to submit, by filing the delay condonation application, that since the delay in filing the appeal is not inordinate delay, coupled with the fact, that it was not having any malicious intention as

			such, he prayed for that the delay based upon the medical certificate, which he has filed, along with the Appeal, the same may be allowed and the appeal itself may be heard on its own merit. The learned Appellate Court, while dealing with Misc. Case No. 9 of 2020, Sushil and another Vs. Alladiya and others, as registered on the delay condonation application, has rejected the delay condonation application and, consequently, the appeal too, stood rejected on the basis of the delay. The reason taken by the Court was, that as far as the present petitioner is concerned, he has been consistently pursuing the matter before the learned Trial Court, but non filing of an appeal within specified time frame, cannot be construed as to be a reasonable basis for seeking condonation of delay, which has chanced in filing the appeal. For the aforesaid purposes, he has drawn the conclusion from the ratio laid down by the Hon'ble Apex Court in the matter of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur, wherein, the scope of delay condonation application was being considered in the light of the facts and circumstances of the said case, where the Hon'ble Apex Court, has principally laid down, that the Courts while deciding the principle civil lis between the parties have to take a considerate view, while considering the delay condonation application and a liberal approach is required to be adopted for considering the delay condonation application, so that the lis itself may be decided on its own merit. But, however, the learned Appellate Court has drawn altogether a distinct reason, and the reason taken therein, is that the law of limitation is substantive law and a definite consequence or a right and observation, if it is raised, the principle should be adhered to and applied appropriately and a strict explanation is required to be given for the lapse of period in preferring the Appeal, and each and specific days, which has chanced in filing the Appeal within time was required to be explained. The rational applied by the Court of 1st Addl. District Judge, Roorkee, District Haridwar, that merely because of the view that the applicant to the delay condonation application, filed in support of the appeal, since was contesting the proceedings before
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			the Trial Court, and thereafter, has absented himself w.e.f. 30th November, 2018, the absence of the pairokar or the applicant himself in pursuing the proceedings before the Trial Court and resulting into the judgment and decree and, consequently, the inability of the petitioner to file an appeal within time, the Court has drawn the inference that the delay of 27 days does not required to be condoned. In fact, this opinion drawn by the learned Appellate Court, is hyper technical because merely because of the fact, that the petitioner was pursuing the matter before the Trial Court and he has lastly appeared on 30th November, 2018, that in itself cannot be drawn as to be a reason not to accept the reason for absence by the present petitioner on the basis of the medical certificate, and medical contingencies, which he has filed along with the delay condonation application. Even this Court is of the view that in ratio of Esha Bhattacharjee (Supra), where the Hon'ble Apex Court has observed, that a pragmatic view has to be taken by the Court in order to render a substantial justice to enable the parties to decide the matter on its own merit. The technicalities of delay should not create any hurdle as such in deciding the proceedings in its own merit. Similar is the view, which this Court feel it apt to apply in the instant case, where the appeal itself, when it has been filed with the delay of 27 days, that ought to be considered in the light of the pleadings raised in the delay condoantion application, particularly, when the learned Appellate Court has not considered the implications of the medical certificate, justifying the delay of 27 days, and has rejected the same merely on the ground that when the applicant was pursuing the matter before the Trial Court, he ought to have continued to pursue the same in appeal even after 30th November, 2018. The slackness in pursuing the matter before the Appellate Court cannot be a reason to hold delay to be inordinate, to reject the delay condonation application preferred by the petitioner along with the appeal seeking condonation of 27 days of delay. Having heard the learned counsel for the parties, and being satisfied with the reason of 27 days of delay, which has given by the petitioner in the
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			delay condonation application filed in support of the appeal preferred by him against the judgment of 25th September, 2019, as rendered in Suit No. 203 of 2014, Alladiya and others Vs. Sushil and another, this Court is of the view, that the delay of 27 days deserves to be condoned and the appeal itself is required to be decided on its own merit. Owing to the above, the Writ Petition, would stand allowed. The impugned order dated 9th September, 2022, rejecting the application, paper No.3-Ka, preferred by the petitioner, under Section 5 of the Limitation Act, along with the Appeal, would hereby, stand quashed. The Civil Appeal itself will be decided on merits, as against the principal judgment of the Trial Court, which is under challenge before it. Subject to the aforesaid, the Writ Petition stands allowed. (Sharad Kumar Sharma, J.) Dated 28.08.2023 Shiv
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